

section or that the transaction is not subject to those limitations;

(iii) Indicate whether the transaction involves a low-quality asset as that term is defined in paragraph (b)(10) of this section;

(iv) Indicate the type and amount of any collateral involved in the transaction and that such collateral complies in all respects with the requirements of this section or that the transaction is not subject to those limitations;

(v) With respect to any transaction subject to § 563.42 of this part, demonstrate that the terms and circumstances of the transaction comply with the standards set forth therein;

(vi) Reflect that loans and extensions of credit made to affiliates comply with paragraph (a)(3) of this section; and

(vii) Be readily accessible for examination and other supervisory purposes.

(2) Notwithstanding paragraphs (a) through (d) of this section, and except with respect to transactions of the type described in 12 CFR 250.250, the Office may require prior notification by a savings association and its subsidiaries of any and all transactions with any or all of the association's affiliates or subsidiaries under the following circumstances:

(i) A de novo savings association that commenced operations or an association or holding company thereof that has been the subject of an application or notice under part 574 of this chapter that was approved during the preceding two year period; or

(ii) A savings association that:

(A) Has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

(B) Is not meeting all of its regulatory capital requirements;

(C) Has entered into a consent to merge, a supervisory agreement or cease and desist order during the preceding two year period, or is subject to a formal enforcement proceeding; or

(D) The OTS determines is a problem association or in troubled condition.

(3) Upon receipt of written notice from the Office identifying one or more of the circumstances described in paragraph (e)(2) of this section and stating that the Office has determined that prior notification by a savings associa-

tion will be required pursuant to this paragraph, the association shall provide, no later than 30 days prior to entering into any transaction for which prior notification has been required, written notice containing a full description of the proposed transaction. If no objections are raised by the Office during such 30 day period, the association or its subsidiaries may proceed with the proposed transaction.

[56 FR 34011, July 25, 1991, as amended at 57 FR 14344, Apr. 20, 1992; 60 FR 66869, Dec. 27, 1995; 61 FR 65179, Dec. 11, 1996; 61 FR 66579, Dec. 18, 1996; 62 FR 3781, Jan. 27, 1997; 62 FR 66262, Dec. 18, 1997; 63 FR 43293, Aug. 13, 1998; 64 FR 69185, Dec. 10, 1999]

§ 563.42 Additional standards applicable to transactions with affiliates and subsidiaries.

(a) *General.* A savings association and its subsidiaries may engage in a transaction with an affiliate only if the transaction is permissible under section 23B of the Federal Reserve Act, 12 U.S.C. 371c-1, and the additional restrictions set forth in this section, as follows:

(1) *Standards.* A savings association and its subsidiaries may engage in any of the transactions described in paragraph (a)(2) of this section only:

(i) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the association or its subsidiary, as those prevailing at the time for comparable transactions with or involving non-affiliated companies; or

(ii) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, non-affiliated companies;

(2) *Transactions covered.* Paragraph (a)(1) of this section applies to the following:

(i) Any covered transaction with an affiliate;

(ii) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;

(iii) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;

(iv) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the savings association or to any other person;

(v) Any transaction or series of transactions with a third party:

(A) If an affiliate has a financial interest in the third party; or

(B) If an affiliate is a participant in the transaction or series of transactions;

(3) *Transactions that benefit an affiliate.* For the purpose of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate if any of the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(b) *Prohibited transactions*—(1) *General.* A savings association and its subsidiaries:

(i) Shall not purchase as fiduciary any securities or other assets from any affiliate unless the purchase is permitted:

(A) Under the instrument creating the fiduciary relationship;

(B) By court order; or

(C) By law of the jurisdiction governing the fiduciary relationship; and

(ii) Whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the association.

(2) *Exception.* Paragraph (b)(1)(ii) of this section shall not apply if the purchase or acquisition of securities has been approved, before the securities are initially offered for sale to the public, by a majority of the directors of the savings association who are not officers or employees of the association or any affiliate thereof.

(c) *Advertising restriction.* A savings association and its subsidiaries and any affiliate of a savings association shall not publish any advertisement or enter into any agreement stating or suggesting that the association shall in any way be responsible for the obligations of its affiliates.

(d) *Definitions.* For the purpose of this section:

(1) The terms *affiliate*, *bank*, *covered transaction*, *savings association* and *sub-*

sidary have the meaning given to each term in § 563.41 of this part, (but the term *affiliate* does not include any company described in paragraph (b)(2) of § 563.41 of this part, any bank, or any savings association).

(2) The term *security* has the meaning given to that term in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10); and

(3) The term *principal underwriter* means any underwriter who, in connection with a primary distribution of securities:

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(e) *Recordkeeping requirements.* With respect to all transactions subject to this section between a savings association and its subsidiaries and the association's affiliates or between a savings association and an unaffiliated party to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate, the association shall make and retain records, that reflect those transactions in reasonable detail. The association's records shall, at a minimum, include the information required by § 563.41(e)(1)(v) of this part.

[56 FR 34013, July 25, 1991, as amended at 60 FR 66869, Dec. 27, 1995]

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

Pursuant to 12 U.S.C. 1463(a) and 1468, a savings association, its subsidiaries and its insiders (as defined) shall be subject to the restrictions contained in 12 CFR Part 215, subparts A and B of the Federal Reserve Board's Regulation O, with the exception of 12 CFR 215.13, in the same manner and to the same extent as if the association were a bank and a member bank of the Federal Reserve System, except that: